IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.584 OF 1991

1. Shri Keraba Govind Vhanalkar,

2. Shri Shankar Daji Vhanalkar,
since deceased his heirs :

2-a.Laxman Shankar Vhanalkar,
age 40 years,

2-b.Sadashiv Shankar Vhanalkar,
age 37 years,

2-c.Raghunath Shankar Vhanalkar,
age 34 years,

2-d.Smt.Parvati Sadashiv Vhanalkar,
75 years,

All R/o.Rashivade (Budruk),
Taluka : Radhanagari,
District : Kolhapur. ...Petitioners

Versus

1. Shri Rajaram Yashwant Deshpande,
R/o.Belbag, 'B' Ward, Kolhapur.

2. Shri Vishnu Daji Vhanalkar,
since deceased by his heirs :

i) Shri Mahipati Vishnu Vhanalkar,
ii) Shri Eknath Vishnu Vhanalkar,
iii) Smt.Tanubai Vishnu Vhanalkar,
All R/o.Rashiwade Bk.,Tal.Radhanagari,
Dist.Kolhapur.
v) Smt.Sonabai Baburao Patil,
R/o.Shelewadi, Tal.Radhanagari,
District Kolhapur. ...Respondents

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Mr.M.R.Suryavanshi for Petitioners.

Mrs.S.A.Mudbidri with Mr.Anil Desai for
Respondent Nos. 1, and 2(i) to 2(iii).

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CORAM: A.M.KHANWILKAR, J.

AUGUST 18, 2004.

ORAL JUDGMENT :

1. This Writ Petition takes exception to the Judgment and Order passed by the Maharashtra Revenue Tribunal Camp at Kolhapur dated September 25, 1990 in Revision Application No.MRT.KP.99 of 1987.

2. Briefly stated, the lands in question are R.S.Nos.157 & 158 admeasuring 0.23 gunthas and 28 acres 2 gunthas respectively situated at Village Chande Taluka Radhanagari. The Petitioners claim that they were cultivating the suit land as tenants prior to 1st April 1957 and were entitled to purchase the same as deemed purchasers by operation of law. It is seen that proceedings under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act') were initiated. The predecessor of the Petitioners did not show willingness to purchase the suit land,

for which reason, the same were dropped and proceedings under Section 32P of the Act were to be started by order dated 22nd December 1966. In proceedings under Section 32P of the Act order came to be passed on 20th April 1974 directing the tenants to restore possession of the suit land to the landlord. Against that decision, tenants carried the matter in two separate appeals alleging that the statement of their predecessor of unwillingness to purchase was falsely recorded and he had not made such statement at all. The Tribunal, by order dated October 12, 1977 remanded the matter to the Trial Court to decide the same afresh and in particular, to ascertain the nature of land whether was agricultural land, grassy land or otherwise, and whether the provisions of the Act were applicable to such land. The Trial Court has adverted to the evidence adduced on record by the respective parties which mentions that out of 28 acres of land, some portion was under cultivation and the tenants were taking crop rotationally. The First Authority in its decision dated 2nd February 1980 has taken the view that on major portion of the land, grass grows naturally, for which reason,

the lands were excepted from the application of provisions of Sections 32 to 32R of the Act.

3. This decision was challenged before the Appellate Court. Even the Appellate Court affirmed the same view in its decision dated 31st December 1986. Although it has adverted to the evidence at Page 106 on record that one acre land was in cultivation of paddy, 2 acres of Nachana, ground nut one acre and 4 to 5 acres and the rest was fallow; notwithstanding this, the Appellate Authority proceeded to hold that the provisions of the Act were not applicable to entire land as the major portion thereof was fallow and grass land. The tenants carried the matter in revision and the Revisional Authority has affirmed the same view taken by the two authorities below. The grievance before this Court on behalf of the Petitioners is that admittedly, there was evidence on record, both documentary and oral to show that certain portion of the land was under cultivation, where agricultural activity was carried on, although the major portion was naturally grass grown land. It is contended that assuming that the Petitioners

tenants have failed to establish that the major portion of the land was not naturally grown grass land or was used for grazing their cattles, even so, there is no reason why the authorities below could have ignored the evidence on record to the extent the agricultural activity was in vogue on the portion of the land on or before 1st April 1957. It is submitted that at least to the extent of such land, the tenants were entitled for appropriate relief. To support this submission, reliance is placed on the decision of this Court reported in **2004 (1) Mh.L.J. 285 in the case of Kishan Ramchandra Kumbhar & Ors. vs. Kashinath Bandu Teli & Ors.**

4. On the other hand, Counsel for the Respondents contends that out of 28 acres of land even if the Petitioners establish the fact that they were cultivating only 4 acres of land for agricultural activity, even in that case, it will have to be held that such occupants were not entitled for any protection by virtue of the provisions of the Act. On the other hand, it will have to be held that the entire land is extricated

from the application of the Act.

5. Having considered the rival submissions, I have no hesitation in taking the view that having regard to the evidence which has already come on record, in particular, the admission of the Respondents landlords that out of 28 acres, 24 acres was naturally grown grass land, the remaining 4 acres was put to agricultural use by the occupants/tenants for cultivation of crop, rotationally. Going by the said evidence namely, the admissions of the Respondents/landlords, which is reinforced by the documentary evidence, it would necessarily follow that the portion on which agricultural activity was carried on, such portion of land will be amenable to the provisions of the Act and at least to that extent, the authorities below ought to have considered the case of the Petitioners/tenants for grant of appropriate relief on the finding that they were in lawful cultivation of such land prior to 1st April 1957, which is the tillers' day. However, as mentioned earlier, none of the three authorities below have examined that aspect; whereas, each of them have proceeded on

the basis that since the major portion of the land was naturally grown grass land, the provisions of the Act will have no application. That approach is clearly impermissible. This legal position is expounded in the recent decision of this Court in **Kishan Ramchandra Kumbhar (Supra)**. Even in that case, out of 18 acres of land, the evidence on record was that 13 acres of land was under Teak, Nimb, shrubs and grass fallow on 1st April 1957 and also prior to that. This Court proceeded to hold that even accepting that concurrent finding recorded by the authority below that on 13 acres of land, grass was grown naturally that was not sufficient to return a finding that the entire suit land was not governed by the provisions of the Tenancy Act. This Court went on to observe that at least the land which was brought under cultivation by carrying on "agricultural activity" by the tenant to the extent of about 5 acres, was obviously governed by the provisions of the Tenancy Act irrespective of the fact that it was done in patches because of the nallas cutting across the land. Applying the principle stated in the said decision, this Petition should succeed by setting

aside the orders passed by the Courts below and instead, the parties will have to be relegated to the lower authority. To my mind, the Appellate Authority, for ascertaining as to what extent the Petitioners had utilised the land for cultivation or for agricultural purpose. It is made clear that in so far as the land which is naturally grown grass land, that portion of the land will be extricated from the application of the provisions of the Act, as it is not the case of the tenants that that portion was used by them for grazing their cattles.

6. The above finding will have to be returned on the basis of the evidence already on record and in the context of the agricultural activity carried out by the Petitioners/tenants on or before 1st April 1957, the tillers' day. The Authority shall then identify the portion of the land upon which agricultural activity was in vogue, out of two gat numbers; and in respect of such portion, may proceed to pass appropriate orders in favour of the tenants as may be permissible by law. The Appellate authority shall finally dispose of the

proceedings after giving opportunity to both sides within three months from the receipt of writ of this Court. Ordered accordingly.

7. Rule made absolute on the above terms with no order as to costs.

A.M.KHANWILKAR, J.